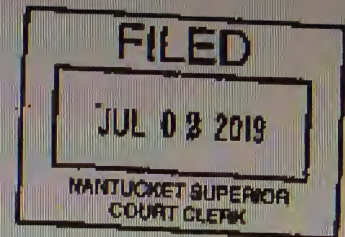


#1

COMMONWEALTH OF MASSACHUSETTS



NANTUCKET, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT
C.A. NO. 1975CV00025

NANTUCKET LAND COUNCIL, INC.

and

TWELVE PERSONS DOMICILED IN THE
COMMONWEALTH OF
MASSACHUSETTS

Plaintiffs

v.

TOWN OF NANTUCKET ZONING BOARD
OF APPEALS, et al.,

and

SURFSIDE CROSSING, LLC,

Defendants

COMPLAINT

Brought pursuant to
M.G.L. c. 40A, §17
and
M.G.L. c. 214, §7A

Introduction

This is an action pursuant to M.G.L. c. 40A, §17, which seeks to annul a decision by the Zoning Board of Appeals of the Town of Nantucket, Massachusetts ("Board") filed with the

Town Clerk on June 14, 2019 ("Decision"). The Decision grants a comprehensive permit, superseding local zoning requirements, pursuant to M.G.L. c.40B, §§20-23 to defendant Surfside Crossing, LLC, to allow construction of a 60 dwelling unit project (the "Project"). A certified copy of the Decision is attached hereto as Exhibit A.

The plaintiffs also seek an injunction, pursuant to M.G.L. c. 214, §7A, to enjoin harm to the environment pursuant to Chapter 214, §7A, which requires a pre-suit notice be sent at least 21 days prior to filing a complaint, absent an emergency, but Chapter 40A, §17 requires that an appeal from a decision of a Zoning Board of Appeal be brought within 20 days of the filing of the decision. Thus, in order to preserve their right to bring a §7A claim arising out of the Decision, the plaintiffs must plead their §7A claim before completing the 21-day pre-suit notice period. The Superior Court has exclusive jurisdiction over claims sounding in M.G.L. c. 214, §7A.

Jurisdiction

M.G.L. c. 40A, §17 confers jurisdiction in this Court over the subject matter of Count I of this action. M.G.L. c. 214, §7A confers exclusive jurisdiction in this Court over claims filed pursuant to that statute.

The Parties

1. The Nantucket Land Council, Inc. ("NLC") is a duly constituted non-profit Massachusetts corporation with recognition by the IRS as a 501(c)(3) organization.
2. The NLC has approximately 1500 members, assets of approximately \$30,500,000 and an annual budget of approximately \$750,000.
3. The NLC mission statement is as follows: "The NLC is a 501(c)(3) non-profit dedicated to protecting Nantucket's natural world and rural character by holding and enforcing

conservation restrictions, commissioning scientific research, monitoring development proposals, engaging in legal proceedings to protect natural resources, and educating the public on local environmental issues."

4. The NLC was founded in 1974 with the sole purpose to protect the environment of the Island of Nantucket and environs.
5. Since its founding, the NLC has engaged in extensive title work, acquisitions projects, and litigation involving title and land use, by itself and in conjunction with other public and private island groups.
6. The NLC owns and manages critical conservation land, primarily by acquiring and holding non-fee interests, to protect open space and indigenous and endangered species and habitats, and it engages in scientific research and public education projects on environmental issues.
7. The NLC currently holds over 85 conservation restrictions ("CRs") on over 1400 acres in Nantucket County, and it has facilitated the acquisition of many more CRs and fee purchases by the Nantucket Islands Land Bank (the "NILB") and the Nantucket Conservation Foundation (the "NCF").
8. Many of the CRs held or facilitated by the NLC were obtained specifically to protect listed endangered species and habitat, including CRs in the vicinity of the site.
9. The Nantucket Land Council, Inc. is a person aggrieved by the Board of Appeals' Decision.
10. The list of plaintiffs enumerated below are all natural persons domiciled in the Commonwealth of Massachusetts:

Lucy S. Dillon
37 Liberty Street
Nantucket MA 02554

Susan E. Robinson
144 Orange Street Apt. 302
Nantucket, MA 02554

William Willet
6 Monomoy Creek Road
Nantucket, MA 02554

Kathryn K. Pochman
4 Catherine Lane
Nantucket, MA 02554

Catherine Raphael
26 Miacomet Road
Nantucket, MA 02554

Linda S. Holland
29 Broadway
Siasconset, MA 02564

Joshua L. Eldridge
2 Mikes Drive
Nantucket, MA 02554

Carl J. Sjolund
1 New Hummock Circle
Nantucket, MA 02554

Carol Muehling
21 Okorwaw Ave
Nantucket, MA 02554

Patrick Taaffe
21 Okorwaw Ave
Nantucket, MA 02554

Caren Oberg Gomes
4A Folger Avenue
Nantucket, MA 02554

Bruce Robert Mandel
10 Midland Avenue
Nantucket, MA 02554

11. The Defendant Nantucket Zoning Board of Appeals (the "Board") is a duly-constituted municipal board within a political subdivision of the Commonwealth of Massachusetts, with a regular place of business located at Town Hall, 37 Washington Street, Nantucket, Massachusetts, 02554.
12. The Defendant Surfside Crossing, LLC (the "Developer") is, upon information and belief, a Massachusetts Limited Liability Company with a regular place of business at 37 Old South Road, Nantucket Massachusetts, 02554.
13. The Defendant Edward Toole is a member (and Chair) of the Zoning Board of Appeals and upon information and belief he resides at 28 Burnell Street, Siasconset, Nantucket, MA 02564
14. The Defendant Susan McCarthy is a member of the Zoning Board of Appeals and upon information and belief she resides at 26 Goldfinch Drive, Nantucket, MA 02554
15. The Defendant Lisa Botticelli is a member of the Zoning Board of Appeals and upon information and belief she resides at 24 Pine Street, Nantucket, MA 02554
16. The Defendant Geoffrey Thayer is a member of the Zoning Board of Appeals and upon information and belief he resides at 5 Doc Ryder Drive, Nantucket, MA 02554-, Nantucket, Massachusetts.
17. The Defendant James Mondani is a member of the Zoning Board of Appeals and upon information and belief he resides at 9 Appleton Road, Nantucket, MA 02554.

Project and Decision

18. The Plaintiffs incorporate by reference herein the allegations contained within paragraphs 1-17, above.

19. The location of the Project is 3,5,7 and 9 South Shore Road, Nantucket, Massachusetts, shown as Parcels 336, 336.9, 336.8 and 336.7 of the Nantucket Assessors Map 67 (the "Project Site").
20. The Project Site lies within a mapped Water Resource Protection District (MassDEP Zone II).
21. The Island of Nantucket has been designated by the United States Environmental Protection Agency as a "sole source" aquifer.
22. The Board issued a comprehensive permit under M.G.L. c.40B, §§20-23, which permit approved the development of 60 dwelling units and accessory structures.
23. Pursuant to the Rules and Regulations of the Nantucket Zoning Bylaw, but for the comprehensive permit issued under M.G.L. c.40B, §§20-23, the Project Site would be approvable for no more than fourteen single family homes.
24. The Board purported to grant waivers from various provisions of Nantucket's Zoning Bylaw and related rules and regulations governing the development of land on Nantucket including those relating to the Nantucket Historic District Commission, and the regulations of the Nantucket Board of Health.
25. The Board failed to require the Developer to identify project impacts upon state listed endangered species on and abutting the Project Site.
26. The Board failed to require the Developer to demonstrate that the Project was not economically feasible at a lower density, that would not require the grant of such extensive waivers.
26. The proposed project site is habitat for the Northern Long Eared Bat ("NLEB"), a listed species under the Massachusetts Endangered Species Act (the "Act").

27. In addition, the state listed vascular plants New England Blazing Star (*Listris novae-angliae*) and Sandplain Blue-eyed Grass (*Sisyrinchium fuscatum*), both protected under the Act, are supported by the habitat on the project site.

COUNT 1 - G.L. c. 40A, §17

28. The Plaintiffs incorporate by reference herein the allegations contained within paragraphs 1-27, above.
29. The Board approved the Project without requiring an analysis of the Project's impacts upon groundwater quality. Such approval was arbitrary and capricious; ultra vires; an abuse of discretion, and an error of law.
30. The Board approved the Project without requiring an analysis of the Project's impacts upon known rare and endangered species on and abutting the Project Site. This was arbitrary, capricious, an abuse of discretion, and an error of law, and the decision exceeds the authority of the Board.
31. The Board purported to "waive" requirements of the Zoning Bylaw, among other provisions of lawfully adopted rules and regulations, without first making necessary findings for or the necessity of such waivers. Such actions were thus ultra vires, arbitrary, capricious, errors of law, and abuses of discretion.
32. The Board concluded that the Developer's possession of a "Project Eligibility Letter" was sufficient evidence that the Developer had "site control" and constituted a valid subsidy as required by G.L. c.40B, §§20-23. Such a conclusion without evidentiary support was thus ultra vires, arbitrary, capricious, an error of law, and an abuse of discretion.

COUNT II - M.G.L. c. 214, §7A- DAMAGE TO THE ENVIRONMENT

33. Plaintiffs incorporate by reference herein the allegations contained within paragraphs 1 through 32, above.
34. The action of the Board in issuing a comprehensive permit, allowing the construction of the Project, will cause damage to the environment, as a result of violations of local and state statutes, bylaws and regulations, the purpose of which is to prevent or minimize damage to the environment, including but not limited to:
1. M.G.L. c. 21A, §13 (Title V, the State Sanitary Code)) and state and local regulations and by-laws implementing and enforcing the same;
 2. The Massachusetts Endangered Species Act, (M.G.L. c. 131A), and the regulations promulgated in conjunction therewith;
 3. The Safe Drinking Water Act, 42 U.S.C. Subchapter XII; and
 4. Massachusetts Department of Environmental Protection Regulations regarding sewer connections, including but not limited to 314 CMR 7.05(c)(1) & 12.04, 314 CMR 12.04, and 314 CMR 7.05(c)(1).
35. Pursuant to M.G.L. c. 214, §7A, "damage to the environment" includes, among other matters, water pollution, improper sewage disposal, and improper or inadequate waste or stormwater disposal.
36. The Town and County of Nantucket is a sole source aquifer, and improper or inadequate sewage and/or waste or stormwater disposal and pollution has severe public health consequences.
37. As the Board noted in its Decision, the Town's water department is operating under an expired water withdrawal permit, and has requested but not yet received permission from the Massachusetts Department of Environmental Protection to increase its water withdrawals to serve additional residential development on the Island.

38. The Town and County of Nantucket has limited sewage disposal capacity and limited public water supplies, and the Project will overburden these services, with severe public health consequences.

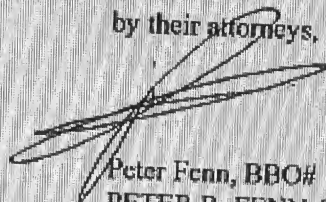
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WHEREFORE, the Plaintiffs request that this Court:

1. Find that the Board of Appeals' Decision was issued in error on any or all of the above grounds;
2. Annul the Board's Decision; and
4. Grant any such other relief deemed proper by the Court.

Plaintiffs, the Nantucket Land Council, Inc.
et al.

by their attorneys,



Peter Fenn, BBO# 162720
PETER R. FENN & ASSOCIATES
53 Milk Street
Westwood, MA 02090
617/522-9292
cell: 617/529-3111
fax: 617 522-4120
email: peterfenn1@mac.com

Dated: July 1, 2019

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NANTUCKET
TOWN CLERK

2018 JUN 14 PM 3:29

**TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MASSACHUSETTS 02554**

Date: June 14, 2019

To: Parties in Interest and Others concerned with the Decision of
The BOARD OF APPEALS in the Application of the following:

COMPREHENSIVE PERMIT Application No.: 020-18

Owner / Applicant: SURFSIDE CROSSING, LLC

PROJECT NAME: SURFSIDE CROSSING

Property Description: 3, 5, 7, and 9 South Shore Road
Lots 4, 3, 2, and 1 on Plan Book 25, Page 50
Map 67, Parcels 336, 336.9, 336.8, & 336.7

Enclosed is the Decision of the BOARD OF APPEALS which has this
day been filed with the office of the Nantucket Town Clerk.

An Appeal from this Decision may be taken pursuant to Sections 21
and 22 of Chapter 40B, Massachusetts General Laws.

Any action appealing the Decision must be brought by filing a
complaint in Nantucket Superior Court or Land Court or the Housing
Appeals Committee, as appropriate, within TWENTY (20) days after
this day's date. Notice of the action must be given as provided
for under Chapter 40B, Sections 21 & 22.

ATTEST: A TRUE COPY

Nancy L. Holmes
NANTUCKET TOWN CLERK

Eleanor W. Antonietti
Eleanor W. Antonietti,
Zoning Administrator